

Docket No. 030158

Serial No. 10/665,747

REMARKS/ARGUMENTS

Claims 1-49 remain pending in the application. Applicant respectfully traverses the rejection and requests reconsideration and allowance of all pending claims.

Discussion of Claim Rejections Under 35 U.S.C. §102

Claims 1-18, 20-21, 23-26, and 28-49 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent Application Publication No. 20050039136 to Othmer (hereinafter Othmer).

The Examiner relies on 35 U.S.C. §102(e)(1), which states in the relevant part: "A person shall be entitled to a patent unless: (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before invention by the applicant for patent." 35 U.S.C. §102.

The date of interest is the date that the application was "filed in the United States." This date refers to the effective U.S. filing date of the reference. The Othmer reference was filed on September 20, 2004. This date is clearly after the filing date of Applicant's application. However, the Othmer reference

...is a continuation-in-part of U.S. patent application Ser. No. 10/929,000, filed Aug. 26, 2004. U.S. patent application Ser. No. 10/929,000, filed Aug. 26, 2004, is a continuation-in-part of U.S. patent application Ser. No. 10/917,200, filed Aug. 11, 2004, and is a continuation-in-part of U.S. patent application Ser. No. 10/916,960, filed Aug. 11, 2004, both of which claim the benefit of U.S. Provisional Patent Application Ser. No. 60/494,644, filed Aug. 11, 2003. *Othmer*, paragraph [0001].

The only date that precedes Applicant's filing date of September 19, 2003 is the date of Provisional Patent Application Ser. No. 60/494,644. For the purposes of 35 U.S.C. §102(e), the Othmer reference is entitled to the date of the Provisional application *only if* the Provisional application satisfies the enablement and written description requirements of 35 U.S.C. §112, first paragraph, in support of the subject matter relied upon by the Examiner in making the rejection. *See generally*, MPEP 706.02(f)(1)(I)(B).

A review of Provisional Patent Application Ser. No. 60/494,644 reveals that there is no support for the subject matter relied upon by the Examiner to make the rejection. The Provisional application is directed to bandwidth usage optimization in wireless networks, and does not discuss determining a position of the mobile communications device nor does it

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discuss determining a position based on data received from an access point. Additionally, there is no support in the Provisional application for the ticker client software discussed in Othmer at paragraphs [0037] *et seq.*

Because Provisional application 60/494,644 provides no support for the portions of Othmer relied upon by the Examiner, Othmer is not entitled to the filing date of the Provisional application. Because Othmer fails to claim the benefit of any other application having a filing date that precedes the filing date of Applicant's application, Othmer is not prior art for the purposes of 35 U.S.C. §102(e).

Therefore, Applicant respectfully requests reconsideration and allowance of claims 1-18, 20-21, 23-26, and 28-49 because the Othmer reference relied upon by the Examiner is not prior art.

Discussion of Claim Rejections Under 35 U.S.C. §103

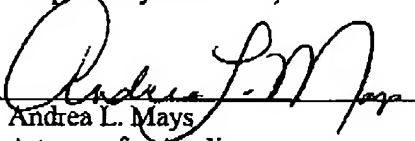
Claims 19, 22, and 27 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Othmer in combination with other U.S. Patent Application publications. As described above, Othmer is not prior art to Applicant's application. The Examiner does not contend that any of the other references disclose all of the features of claims 19, 22, and 27 without resort to Othmer. Therefore, Applicant respectfully requests reconsideration and allowance of claims 19, 22, and 27.

Applicants therefore respectfully request that a timely Notice of Allowance be issued in this case.

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